

# COUNTY OF YORK

## MEMORANDUM

**DATE:** June 15, 2004 (BOS Mtg. 7/13/04)

**TO:** York County Board of Supervisors

**FROM:** James O. McReynolds, County Administrator

**SUBJECT:** Application No. UP-638-04, Mike Pickett

### ISSUE

This application requests a Special Use Permit, pursuant to Section 24.1-407(b) of the York County Zoning Ordinance, to authorize a detached accessory apartment in conjunction with a single-family detached dwelling. The accessory apartment is to be located on the second floor of an existing two-story detached garage on property located at 209 Jara Lane and further identified as Assessor's Parcel No. 37-112B-81. The Zoning Ordinance definition of *dwelling, accessory unit/apartment* states, "When in a detached structure, the presence of a habitable room or rooms, as defined by the Uniform Statewide Building Code, including a living area and a bathroom with sink, toilet and tub or shower shall be considered to constitute an accessory apartment." A building permit application was submitted to finish the second floor of the garage and install a full bathroom in the structure, thus requiring the need for an approved special use permit for an accessory apartment.

### DESCRIPTION

- Property Owner: Mike Pickett
- Location: 209 Jara Lane
- Area: 0.31 acre
- Frontage: Approximately 75 feet on Jara Lane
- Utilities: Public water and public sewer
- Topography: Flat
- 2015 Land Use Map Designation: High-Density Residential
- Zoning Classification: R13 - High-Density Single-Family Residential
- Existing Development: Single-family detached home with detached garage
- Surrounding Development:

North: Single-family detached residential (Greenlands)  
East: Vacant parcel (Coventry subdivision open space) and single-family detached residential (Coventry)  
South: Vacant parcel (Greenlands subdivision open space)  
West: Single-family detached residential (Greenlands)

- Proposed Development: Detached accessory apartment in conjunction with a single-family detached dwelling.

### **CONSIDERATIONS/CONCLUSIONS**

1. Accessory apartments in detached structures are permitted in the R13 district with a Special Use Permit, provided the floor area of the apartment does not exceed 800 square feet, or 35% of the floor area of the principal dwelling, whichever is less. The principal dwelling on the property contains 4,680 square feet of floor area. The proposed accessory apartment would be located on the second floor of an existing 1,820-square foot two-story detached garage. The applicant has indicated that the space would be used for home schooling purposes and for residence by immediate family members only. The proposed accessory apartment would contain approximately 692 square feet of habitable floor area, or 15% of the principal dwelling, and would include a living area and bathroom (see attached floor plan).
2. Performance standards for accessory apartments are set forth in Section 24.1-407 of the Zoning Ordinance. These limit the maximum number of accessory apartments to one per single-family detached dwelling, require adequate provisions for off-street parking, require occupancy only by family members or guests of the occupant of the principal dwelling, and prohibit the apartment from being rented separate from the principal dwelling. These standards have been included as conditions in the approving resolution.
3. Property within the Greenlands subdivision is subject to homeowners' covenants, and the development has an established homeowners' association. The covenants include declarations relevant to land use, which, depending on interpretation, may or may not impact the applicant's ability to establish a detached accessory apartment on the subject property. However, regardless of the language of the covenants, the County must evaluate the accessory apartment use within the context of the Zoning Ordinance and its standards. The County cannot be a party to the enforcement of private covenants and restrictions and the approval of a Special Use Permit will not relieve the applicant of any responsibilities for compliance with such covenants or restrictions. A proposed approval condition addresses this issue.

### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission considered this application at its regular meeting on June 9, 2004. Attorney Svein Lassen, representing the applicant, spoke in favor of the application. Attorney Vonda J. Dunn, representing the Greenlands Homeowners' Association, spoke in opposition to the application, stating that construction of a detached garage containing an apartment would be in conflict with existing Homeowners' Association covenants and restrictions. Several homeowners from the Greenlands community also spoke in opposition to the application for the same reason. Commission members noted the applicant's intent to use the apartment for home schooling purposes, and expressed concern that such use would be in conflict with the intent of the Zoning Ordinance to allow such apartments strictly for residential purposes. The Planning Commission, with one member (Davis) absent, was unable by virtue of a tied vote (3:3) to adopt the motion that was made to recommend approval. No other motion was made for action on the application.

### **RECOMMENDATION**

Given the above-noted standards and proposed approval conditions, I am of the opinion that the subject parcel can accommodate the proposed accessory apartment with no adverse impacts on adjacent properties or County infrastructure. From the standpoint of County zoning regulations, the detached accessory garage is permitted as a matter of right. Zoning regulations also allow the second floor of the garage to be finished as habitable space as long as a complete bathroom is not installed. Use of that finished space for home schooling, as an extra bedroom, as a "bonus" room or for various other purposes would also be permitted as a matter of right under existing zoning regulations, as long as a full bathroom is not installed. In this case, it is the applicant's desire to include the full bathroom that has triggered the need for a Special Use Permit. I do not perceive this desire to be inconsistent with County regulations nor that it will change the character of the structure and its compatibility with its surroundings. Should the property change ownership, the Special Use Permit controls will bind any future owners as well. Nevertheless, County action will not relieve the applicant of the need to comply with any applicable covenants and restrictions. Therefore, I recommend that the Board approve this application. This may be accomplished through the adoption of proposed Resolution No. R04-106.

Carter/3337:AMP

Attachments:

- Excerpts from Planning Commission minutes, June 9, 2004
- Zoning Map
- Survey Plat
- Floor plan of proposed apartment
- Elevation of garage building

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- Proposed Resolution No. R04-106